

# SENATE BILL 688

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CF HB 972

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By: **Senator Raskin**

Introduced and read first time: February 10, 2010

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 25, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland General Corporation Law – Miscellaneous Provisions**

3 FOR the purpose of altering the manner in which certain charter documents of certain  
4 business entities must be executed by authorizing certain officers, agents, and  
5 persons acting in a certain capacity to sign, acknowledge, witness, and attest  
6 the documents and to verify certain matters and facts; clarifying that a  
7 corporation may provide by its charter that holders of one or more classes or  
8 series of stock have certain voting rights under certain circumstances; clarifying  
9 that certain authority of a corporation to provide by its charter for classes of  
10 stock and certain rights, restrictions, and preferences of classes of stock applies  
11 to series of stock; altering the circumstances under which the board of directors  
12 of a corporation may effect a certain reverse stock split; expanding the authority  
13 of the board of directors of a corporation to delegate to certain committees  
14 powers of the board relating to the authorization of dividends on stock and other  
15 distributions; repealing certain unnecessary provisions of law relating to the  
16 time at which a stockholder of a corporation or a shareholder of a real estate  
17 investment trust who proposes a certain nominee or matter for consideration at  
18 a meeting of the stockholders or shareholders may be required to provide  
19 certain notice; altering the circumstances under which certain notice given by a  
20 corporation by a single notice to all stockholders who share an address is  
21 effective; providing that, prior to being convened, a meeting of stockholders may  
22 be postponed from time to time to a certain date; altering the contents of a  
23 certain notice of a proposed charter amendment that a corporation must give to  
24 certain stockholders; exempting corporations that have a class of securities  
25 registered under a certain federal law from the application of certain provisions

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 of law relating to the dissolution of a corporation; clarifying that certain  
 2 restrictions on voting rights apply to the holders of certain shares and not to the  
 3 shares; making conforming and stylistic changes; and generally relating to  
 4 corporations and other business entities.

5 BY repealing and reenacting, with amendments,  
 6 Article – Corporations and Associations  
 7 Section 1–301(a), 2–105(a), 2–309(d) and (e), 2–411(a), 2–504(f), 2–504.1,  
 8 2–511(d), 2–604, 3–413, and 3–702(a)  
 9 Annotated Code of Maryland  
 10 (2007 Replacement Volume and 2009 Supplement)

11 BY repealing and reenacting, without amendments,  
 12 Article – Corporations and Associations  
 13 Section 8–601.1  
 14 Annotated Code of Maryland  
 15 (2007 Replacement Volume and 2009 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Corporations and Associations**

19 1–301.

20 (a) Articles supplementary and articles of amendment, restatement,  
 21 [restatement and] amendment **AND RESTATEMENT**, consolidation, merger, share  
 22 exchange, transfer, and extension and, except as provided in § 3–406(b) of this article,  
 23 articles of dissolution shall be executed as follows:

24 (1) They shall be signed and acknowledged for each corporation,  
 25 business trust, or real estate investment trust party to the articles, by its chairman or  
 26 vice chairman of the board of directors or board of trustees, **BY** its chief executive  
 27 officer, chief operating officer, **CHIEF FINANCIAL OFFICER**, [president] **PRESIDENT**,  
 28 or one of its vice presidents, **OR, IF AUTHORIZED BY THE BYLAWS OR RESOLUTION**  
 29 **OF THE BOARD OF DIRECTORS OR BOARD OF TRUSTEES AND THE ARTICLES SO**  
 30 **STATE, BY ANY OTHER OFFICER OR AGENT OF THE CORPORATION, BUSINESS**  
 31 **TRUST, OR REAL ESTATE INVESTMENT TRUST;**

32 (2) They shall be witnessed or attested by the secretary, **TREASURER**,  
 33 **CHIEF FINANCIAL OFFICER, ASSISTANT TREASURER**, or [an] assistant secretary of  
 34 each corporation, business trust, or real estate investment trust party to the articles,  
 35 or, if authorized by the bylaws or resolution of the board of directors or board of  
 36 trustees and the articles so state, by any other officer or agent of the corporation,  
 37 business trust, or real estate investment trust;

1           (3) They shall be signed and acknowledged for each other entity party  
2 to the articles by a majority of the entire board of trustees or other governing body **OR**  
3 **BY A PERSON ACTING IN A SIMILAR CAPACITY FOR THE ENTITY AS AN OFFICER**  
4 **DESCRIBED IN ITEM (1) OF THIS SUBSECTION;** and

5           (4) Except as provided in subsection (b) of this section, the matters  
6 and facts set forth in the articles with respect to authorization and approval shall be  
7 verified under oath as follows:

8           (i) With respect to any Maryland corporation, business trust, or  
9 real estate investment trust party to the articles, by the chairman or the secretary of  
10 the meeting at which the articles or transaction were approved, [or] by the chairman  
11 or vice chairman of the board of directors or board of trustees, **BY THE** chief executive  
12 officer, chief operating officer, **CHIEF FINANCIAL OFFICER**, president, vice president,  
13 secretary, or assistant secretary of the corporation, business trust, or real estate  
14 investment trust, **OR, IF AUTHORIZED IN ACCORDANCE WITH ITEM (1) OF THIS**  
15 **SUBSECTION AND THE ARTICLES SO STATE, BY ANY OTHER OFFICER OR AGENT**  
16 **OF THE CORPORATION, BUSINESS TRUST, OR REAL ESTATE INVESTMENT TRUST;**

17           (ii) With respect to any foreign corporation party to articles of  
18 consolidation, merger, or share exchange, by the chief executive officer, chief operating  
19 officer, president, vice president, secretary, or assistant secretary of the corporation;  
20 and

21           (iii) With respect to any other Maryland or foreign entity party  
22 to the articles, by the chief executive officer, chief operating officer, president, vice  
23 president, secretary, assistant secretary, managing trustee, or persons acting in a  
24 similar position for the entity.

25 2-105.

26           (a) A corporation may provide by its charter:

27           (1) For one or more classes **OR SERIES** of stock, the voting rights of  
28 each class **OR SERIES**, and any restriction on or denial of these rights;

29           **(2) THAT THE HOLDERS OF ONE OR MORE CLASSES OR SERIES OF**  
30 **STOCK HAVE EXCLUSIVE VOTING RIGHTS ON A CHARTER AMENDMENT THAT**  
31 **WOULD ALTER ONLY THE CONTRACT RIGHTS, AS EXPRESSLY SET FORTH IN THE**  
32 **CHARTER, OF THE SPECIFIED CLASS OR SERIES OF STOCK;**

33           **[(2)](3)** As to each class **OR SERIES** of stock, either the par value of  
34 the shares or that the shares are without par value;



1            ~~[(11)](12)~~ For restrictions on transferability or ownership for any  
2 purpose, including restrictions designed to permit a corporation to qualify as:

3            (i) A real estate investment trust under the Internal Revenue  
4 Code or regulations adopted under the Internal Revenue Code; or

5            (ii) An investment company under the Investment Company Act  
6 of 1940 or regulations adopted under the Investment Company Act of 1940; and

7            ~~[(12)](13)~~ That the board of directors, with the approval of a majority  
8 of the entire board, and without action by the stockholders, may amend the charter to  
9 increase or decrease the aggregate number of shares of stock of the corporation or the  
10 number of shares of stock of any class **OR SERIES** that the corporation has authority  
11 to issue.

12 2–309.

13            (d) If the board of directors of a corporation has given general authorization  
14 for a distribution and provides for or establishes a method or procedure for  
15 determining the maximum amount of the distribution, the board may delegate to [a  
16 committee of the board or] an officer of the corporation the power, in accordance with  
17 the general authorization, to fix the amount and other terms of the distribution.

18            (e) (1) This subsection applies to a corporation:

19            (i) With a class of equity securities registered under the  
20 Securities Exchange Act of 1934; or

21            (ii) Registered as an open–end investment company under the  
22 Investment Company Act of 1940.

23            (2) Unless [the charter of a corporation provides otherwise]  
24 **PROHIBITED BY THE CHARTER OF A CORPORATION BY REFERENCE TO THIS**  
25 **SUBSECTION OR THE SUBJECT MATTER OF THIS SUBSECTION**, the board of  
26 directors of the corporation may amend the charter, with the approval of a majority of  
27 the board of directors and without stockholder action, to effect a reverse stock split  
28 that results in a combination of shares of stock at a ratio of not more than 10 shares of  
29 stock into one share of stock in any 12–month period.

30            (3) Within 20 days after the effective date of the reverse stock split,  
31 the corporation shall give written notice of the reverse stock split to each holder of  
32 record of the combined shares of stock as of the effective date.

33 2–411.

34            (a) The board of directors of a corporation may:

1 (1) Appoint from among its members an executive committee and  
2 other committees composed of one or more directors; and

3 (2) Delegate to these committees any of the powers of the board of  
4 directors, except the power to:

5 (i) [Authorize dividends on stock, except as provided in §  
6 2–309(d) of this title;

7 (ii)] Issue stock other than as provided in subsection (b) of this  
8 section;

9 [(iii)](II) Recommend to the stockholders any action which  
10 requires stockholder approval, other than the election of directors;

11 [(iv)](III) Amend the bylaws; or

12 [(v)](IV) Approve any merger or share exchange which does  
13 not require stockholder approval.

14 2–504.

15 (f) The charter or bylaws may require any stockholder proposing a nominee  
16 for election as a director or any other matter for consideration at a meeting of the  
17 stockholders to provide advance notice of the nomination or proposal to the corporation  
18 **BEFORE A DATE OR WITHIN A PERIOD OF TIME** [of not more than:

19 (1) 90 days before the date of the meeting; or

20 (2) In the case of an annual meeting, 90 days before the first  
21 anniversary of:

22 (i) The mailing date of the notice of the preceding year’s annual  
23 meeting; or

24 (ii) The preceding year’s annual meeting; or

25 (3) Another time] specified in the charter or bylaws.

26 2–504.1.

27 (a) Subject to § 2–504(d) of this subtitle, any notice given by a corporation to  
28 a stockholder under this article or the charter or bylaws of the corporation is effective  
29 if given by a single notice, in writing or by electronic transmission, to all stockholders  
30 who share an address **UNLESS THE CORPORATION HAS RECEIVED A REQUEST**  
31 **FROM A STOCKHOLDER IN WRITING OR BY ELECTRONIC TRANSMISSION THAT A**  
32 **SINGLE NOTICE NOT BE GIVEN** [if:

1           (1) The corporation gives notice, in writing or by electronic  
2 transmission, to the stockholder of its intent to give a single notice; and

3           (2) The stockholder:

4                 (i) Consents to receiving a single notice; or

5                 (ii) Fails to object in writing within 60 days after the  
6 corporation gives notice to the stockholder of its intent to give a single notice.

7           (b) A stockholder may revoke consent given under subsection (a) of this  
8 section, whether affirmative or implied, by written notice to the corporation].

9           **[(c)](B)** This section does not limit the manner in which a corporation  
10 otherwise may give notice to stockholders.

11 2-511.

12           (d) **(1)** A meeting of stockholders convened on the date for which it was  
13 called may be adjourned from time to time without further notice to a date not more  
14 than 120 days after the original record date.

15                         **(2) PRIOR TO BEING CONVENED, A MEETING OF STOCKHOLDERS**  
16 **MAY BE POSTPONED FROM TIME TO TIME TO A DATE NOT MORE THAN 120 DAYS**  
17 **AFTER THE ORIGINAL RECORD DATE.**

18 2-604.

19           (a) This section does not apply to a charter amendment by the board of  
20 directors in accordance with § [2-105(a)(12)] **2-105(A)(13)** or § 2-309(e) of this title.

21           (b) If there is any stock outstanding or subscribed for and entitled to be voted  
22 on the charter amendment, it shall be approved as provided in this section.

23           (c) Except as provided in § 2-112 of this title, the board of directors of a  
24 corporation proposing a charter amendment shall:

25                 (1) Adopt a resolution which sets forth the proposed amendment and  
26 declares that it is advisable; and

27                 (2) Direct that the proposed amendment be submitted for  
28 consideration at either an annual or a special meeting of the stockholders.

29           (d) (1) Notice which states that a purpose of the meeting will be to act on  
30 the proposed amendment shall be given by the corporation in the manner required by  
31 Subtitle 5 of this title to:

1 (i) Each stockholder entitled to vote on the proposed  
2 amendment; and

3 (ii) Each stockholder not entitled to vote on the proposed  
4 amendment if the contract rights of his stock, as expressly set forth in the charter,  
5 would be altered by the amendment.

6 (2) The notice shall [include]:

7 (I) **INCLUDE** a copy of the amendment or a summary of the  
8 changes it will effect; **OR**

9 (II) **1. IDENTIFY A WEBSITE AT WHICH THE AMENDMENT**  
10 **OR A SUMMARY OF THE CHANGES IT WILL EFFECT MAY BE ACCESSED; AND**

11 **2. INCLUDE A TELEPHONE NUMBER OR AN ADDRESS**  
12 **WHERE THE STOCKHOLDER MAY REQUEST A PAPER COPY OF THE AMENDMENT**  
13 **OR SUMMARY WITHOUT CHARGE.**

14 (e) The proposed amendment shall be approved by the stockholders of the  
15 corporation by the affirmative vote of two thirds of all the votes entitled to be cast on  
16 the matter.

17 3-413.

18 (a) [Stockholders] **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**  
19 **SECTION, STOCKHOLDERS** entitled to cast at least 25 percent of all the votes entitled  
20 to be cast in the election of directors of a corporation may petition a court of equity to  
21 dissolve the corporation on grounds that:

22 (1) The directors are so divided respecting the management of the  
23 corporation's affairs that the votes required for action by the board cannot be obtained;  
24 or

25 (2) The stockholders are so divided that directors cannot be elected.

26 (b) [Any] **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**  
27 **ANY** stockholder entitled to vote in the election of directors of a corporation may  
28 petition a court of equity to dissolve the corporation on grounds that:

29 (1) The stockholders are so divided that they have failed, for a period  
30 which includes at least two consecutive annual meeting dates, to elect successors to  
31 directors whose terms would have expired on the election and qualification of their  
32 successors; or

1 (2) The acts of the directors or those in control of the corporation are  
2 illegal, oppressive, or fraudulent.

3 (c) Any stockholder or creditor of a corporation other than a railroad  
4 corporation may petition a court of equity to dissolve the corporation on grounds that  
5 it is unable to meet its debts as they mature in the ordinary course of its business.

6 (D) SUBSECTIONS (A)(2) AND (B)(1) OF THIS SECTION DO NOT APPLY TO  
7 ANY CORPORATION THAT HAS A CLASS OF EQUITY SECURITIES REGISTERED  
8 UNDER THE FEDERAL SECURITIES EXCHANGE ACT OF 1934.

9 3-702.

10 (a) (1) [Control] **HOLDERS OF CONTROL** shares of the corporation  
11 acquired in a control share acquisition have no voting rights **WITH RESPECT TO THE**  
12 **CONTROL SHARES** except to the extent approved by the stockholders at a meeting  
13 held under § 3-704 of this subtitle by the affirmative vote of two-thirds of all the votes  
14 entitled to be cast on the matter, excluding all interested shares.

15 (2) A charter provision permitted by § 2-104(b)(5) of this article may  
16 not apply to the proportion of votes required by paragraph (1) of this subsection.

17 8-601.1.

18 Sections 2-201(c), 2-313, 2-405.1(d) through (g), 2-502(e), and 2-504(f) of this  
19 article shall apply to real estate investment trusts.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 June 1, 2010.

Approved:

\_\_\_\_\_  
Governor.

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President of the Senate.

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Speaker of the House of Delegates.